

**The Visa Process:
Strategic Direction for a 21st Century System**

Testimony before the Committee on Government Reform, Subcommittee on National
Security, Emerging Threats, and International Relations

House of Representatives

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Mr. Chairman and other distinguished Members of the committee,

Thank you for the opportunity to assess the roles of the Departments of State, Homeland Security, and Justice in programs for issuing and managing visas.

In my testimony today, I would like to reaffirm the importance of the efforts by Congress to strengthen the programs governing the issuance and management of travel documents; assess the results of the administration's efforts so far; offer principles and issues that might guide the next steps; and offer specific recommendations for the way forward.

After September 11th

In the wake of 9/11, the Congress and the administration turned its attention to strengthening the issuance and management of visas. They were right to do so and make this effort a very high priority in the global effort to diminish terrorist travel. Terrorists have tried virtually every means available to get to the United States. The overwhelming number of known and suspected terrorists, however, have traveled and remained here in the same manner as most foreign visitors, employing a nonimmigrant visa, which can be obtained from any of the 211 American consulates around the world or under certain circumstances within this country. The length of stay varies depending on the type of visa. Travelers holding nonimmigrant visas comprise the majority of individuals entering the United States.¹ Additionally, others obtain immigration visas or are visitors carrying passports from the 27 countries participating in the visa waiver program.² A recent study of 94 foreign-born terrorists by Janice Kephart, former counsel for the September 11 Commission, revealed that virtually all used some form of travel documentation to enter or remain in the United States.³

Not only do most terrorists mask their movements by using legitimate means of trade and travel, they often break the law in the process. Kephart noted that over half of the subjects in her study committed some kind of fraud in pursuance of obtaining documentation.⁴ Some were also known or suspected terrorists before they entered this country. These facts suggest that an appropriate screening of visa issuance and monitoring the use of visas and foreign-issued passports could be an effective layer in interdicting terrorist travel and restricting their freedom of movement within the United States.

¹ James Jay Carafano and Ha Nguyen, "Better Intelligence Sharing for Visa Issuance and Monitoring: An Imperative for Homeland Security, October 27, 2003, Heritage Backgrounder #1699, <http://www.heritage.org/Research/HomelandDefense/BG1699.cfm>.

² James Jay Carafano, and Richard Weitz, "Building the Alliance for Freedom: An Agenda for Improving and Expanding the Visa Waiver Program," May 6, 2005, Heritage Backgrounder #1850, <http://www.heritage.org/Research/NationalSecurity/bg1850.cfm>.

³ Janice Kephart, "Immigration Benefits and Terrorism," The Center for Immigration Studies, September 2005, p. 7.

⁴ Kephart, *ibid*.

Winning the war on terrorism, however, requires more than just stopping individual plotters. It also means building a strong America—a free and prosperous nation that can out compete and out last the nation’s enemies while we hunt down their leaders, destroy their sanctuaries, disrupt their networks, cut-off their sources of funding, support, and recruiting, and discredit their ideology. The effective management of visas and passports has a vital role to play here as well.⁵ Maintaining the free flow of people, goods, services, and ideas across America’s borders are also vital national security interests. Arguably, reduction and delay in the issuance visas since 9/11 for security concerns have had a significant economic impact and reduced U.S. competitiveness.⁶

Where We Are

In regards to the system of visas and passports that facilitate international travel, major challenges remain in meeting the equally compelling demands of better security, economic growth, and strengthening civil society. In particular, serious obstacles remain to providing adequate physical infrastructure at counselor offices and border entry and exit points, enhancing human capital programs, and improving the integration and sharing of information between intelligence and information data bases.⁷

On the other hand, there has been progress in both improving customer service and strengthening the security of visa issuance and management since 9/11. In virtually every category, visa issuance levels were higher in 2004, than in 2003.⁸ Recently, the Government Accountability Office noted improvements in the application of the Visas Mantis program for adjudicating visas for science students and scholars.⁹ The Departments of State, Justice, and Homeland Security are working to harmonize their policies, operations, and information technology programs.

⁵ James Jay Carafano and Paul Rosenzweig, *Winning the Long War: Lessons from the Cold War of Defeating Terrorism and Preserving Freedom* (Washington: DC: The Heritage Foundation, 2005), pp. 67-68.

⁶ See, for example, Bay Area Science and Innovation Consortium, Bay Area Economic Forum, “Visas for Higher Education and Scientific Exchange: Balancing Security and Economic Competitiveness,” April 2005, pp. 4-7. Other factors likely also contributed to the decline including a global recession and overall decline in international travel.

⁷ These challenges are detailed well in Stephen Yale-Loehr, et.al., “Secure Borders, Open Doors: Visa Procedures in Post-September 11 Era,” Migration Policy Institute (2005).

⁸ U.S Department of State, “Table 1/Part 1: Immigrant and Nonimmigrant Visas Issued at Foreign Posts, Fiscal Years 1994-2004,” (2005), http://travel.state.gov/pdf/visa_office_report_table_i.pdf.

⁹ See, U.S. Government Accountability Office, “Streamlined Visas Mantis Program Has Lowered Burden on Foreign Science Students and Scholars, But Further Refinements Needed,” GAO-05-198, (February 2005). The report notes significant improvement from an investigation by the GAO the year before. U.S. Government Accountability Office, “Improvements needed to Reduce Time Taken to Adjudicate Visas for Science Students and Scholars,” GAO-04-371, (February 2004).

Of particular significance, the new Secretary of Homeland Security, Michael Chertoff, recently announced a reorganization of his department. Among the initiatives was the creation of an Office of Policy, Planning, and International Affairs which the secretary intends to ask the Congress be managed under a new Undersecretary position. The secretary also announced his intent to create a Chief Intelligence Officer to oversee all the department's intelligence activities.¹⁰ These initiatives should provide strong leadership from the department for overseeing its responsibilities for visa and passport programs.

Perhaps, most important, while we recognize there is still much work to be done to strengthen existing programs, there is evidence to suggest that transnational terrorist groups perceive that the United States is a 'harder' target than it was before 9/11. In part, this is reflected in increased efforts to organize and conduct operations in Europe and recruit operatives who are holders of passports from Visa Waiver countries or U.S. citizens.¹¹

The Point of Decision—Incremental Improvement or Transformation

The main issue I would like to bring before this committee is not what can be done to strengthen the current programs that divide responsibilities between three major federal departments, but whether we should continue to proceed on this course or take a new path. As noted in a recent report by the Migration Policy Institute, despite many the changes in visa and passport application, issuance, and oversight, the basic legislative framework that governs the system "has not changed in significant ways."¹² Four years of experience have shown us that incremental gains in security under this system are costly, disruptive, and difficult to implement. Recognizing that the war on terrorism will be a long protracted conflict and that the requirements for free and efficient international travel will be enduring for any country that wants to remain competitive in the 21st century—it is time for the Congress to ask whether we should consider an alternative paradigm.

At the heart of the shortfalls of the current system is the requirement for multiple agencies to balance the multiple priorities of security, economy, and civil society. To the maximum extent possible these programs should be consolidated under the agency whose core competencies and principle missions most closely align with the tasks required. In particular, as pointed in a bipartisan study conducted by The Center for Strategic and International Studies and The Heritage Foundation, little synergy has been gained by splitting responsibility for visa programs between the Departments of State and Homeland Security (DHS).¹³

¹⁰ Congressional Research Service, "The Department of Homeland Security Reorganization: The 2SR Initiative," (August 19, 2005), pp. CRS-3 to CRS-5.

¹¹ Robert S. Leiken, "Bearers of Global Jihad: Immigration and National Security After 911," The Nixon Center (March 2004), pp. 91-101.

¹² Yale-Loehr, "Secure Borders, Open Doors: Visa Procedures in Post-September 11 Era," p. v.

¹³ James Jay Carafano and David Heyman, "DHS 2.0: Rethinking the Department of Homeland Security," The Center for Strategic and Budgetary Assessments and The Heritage Foundation, (December 2005), p.

Major progress won't be made until an appropriate consolidation of authority and responsibility has been undertaken. I believe that should be in the DHS. Despite its name, the DHS is the federal government's "center of gravity" for issues involving international trade and travel. The term "homeland security" is misleading. Virtually no homeland security program can be implemented effectively without the support and cooperation of America's friends and allies around the world. On the other hand, security is not about "pushing our borders out," making other nations bear the burden of protecting U.S. citizens. Homeland security is really a cooperative effort that enables nations to serve their mutual interests and protect their citizens—as well as the global economic lifelines that carry the free flow of goods, services, peoples, and ideas—against the threat of transnational terrorism.

While the Homeland Security Act of 2002 gave the Secretary of the DHS exclusive authority to issue regulations and administer the visa program, consular officers remained part of the Department of State.¹⁴ This was a mistake. For the DHS to fulfill its responsibilities in the visa process, and because of the national security aspect of visa approvals, the Bureau of Consular Affairs' Office of Visa Services should be placed under the DHS.

Principles for a 21st Century System

As a second step, the DHS and the Congress need to start with a blank sheet of paper and redesign a system for the 21st century. This vision should provide (1) a new, simplified legislative framework to govern immigration law; (2) a bold new infrastructure investment plan; (3) an innovative human capital program; and (4) a roadmap for transforming the current system into a 21st century system.

Here are some principles that might guide their efforts.

Principle #1 Security, Economic Growth, and Civil Society are Equal Priorities. Any framework for managing visa programs must meet all three national priorities. An effective system would: (1) Keep legitimate travel documents out of the hands of known or suspected terrorists and prevent them from using fraudulent documents; (2) Minimize impediments to legitimate travel; (3) Protect the liberties and privacy of U.S. citizens, provide reciprocal benefits to the citizens of friendly and allied nations.

Principle #2 Integrity is Important. The rule of law must be maintained if immigration laws are to serve as a deterrent to criminals and terrorists. The United States should only have immigration laws it is willing to fully enforce and it should allocate the resources to fully enforce those laws.

13, http://www.csis.org/hs/041213_dhsv2.pdf or <http://www.heritage.org/Research/HomelandDefense/sr02.cfm>.

¹⁴ Homeland Security Act of 2002, Section 428(b)(1).

Principle #3 *Visas and Passports don't have to Do it All.* Visas and passports are part of a layered international security system for fighting transnational terrorism. The United States should not over invest in attempting to build a perfect system. The biggest bang for the security buck is in effective counterterrorism, intelligence and early warning programs that thwart terrorist acts before they occur. These must be fully funded first.

Principle #4 *Stop Wasting 90 percent of Security Assets on 90 percent of the people that aren't a problem.* Mandatory screening or interview programs that waste time and effort on low-risk individuals have to be eliminated. The best system is one that will require security and screening personnel to focus maximum resources on high-risk individuals—known or suspected terrorists and transnational criminals.

Principle #5 *Think Outside the Box.* There is no inherent reason why counselor services need to be conducted at State Department facilities or why the United States should be wedded to the current infrastructure and programs employed to manage trade and travel.

Principle #6 *Engage the Private Sector.* The federal government has the responsibility to ensure that policies and priorities are implemented to standard, but that does not mean that visa and passport activities must be conducted by the federal government. The private sector is far more adept at accommodating to the changing environment of global trade and travel. Private sector solutions should be aggressively sought out.

Principle #7 *Take Time and Get it Right.* The terrorists aren't going anywhere. It took over five years to plan the 9/11 attacks, three years to organize the Madrid bombings. The next may occur tomorrow—or maybe in the works for a decade from now. Transnational terrorist are endemic threat to a globalized world. What is needed are long-term solutions to a long-term problem.

Recommendations

As the Congress looks at the broad scope of visa issuance and management programs, in addition to rethinking the overall strategic direction of these efforts, there are several specific issues that it might consider.

Visa Waiver Program

The Visa Waiver program should be strengthened and expanded. New criteria need to be added to account for transnational security threats and document surety. The program also needs to be expanded. Every country that is added to the program allows U.S. resources to focus on other more pressing security concerns. In addition, adding countries will strengthen ties with emerging strategic allies. The United States should work with

targeted nations such as India, South Korea, Poland, and the Czech Republic to establish a joint roadmap to reach a Visa Waiver program agreement within five years.¹⁵

Terrorist Screening Center (TSC)

The TSC plays an important role in providing intelligence support for the visa issuance and monitoring process. Responsibility for managing the center should be given to the DHS and its functions better integrated with the National Targeting Center and the Law Enforcement Support Center.¹⁶

State and Local Support for Immigration Enforcement

State and local governments must provide more support for enforcing immigration laws. The integrity of these laws must be restored. In addition, state, local and federal officials must work closely together to combat transnational threats. This means both more law enforcement and increasing capacity in a manner that respects civil liberties and the roles and responsibilities of federal and state authorities. Adequate authorities already exist. Instead, Congress should promote the use of Section 287(g) of the Immigration and Naturalization Act (INA) as a better mechanism for enabling state and local law enforcement to join in the global war against terrorism. Congress must create incentives to use this program and demand that the DHS places more emphasis on using this potentially valuable tool.¹⁷

Consolidation of Border Support Agencies

In “consolidating” responsibility for border, immigration, and transportation security, DHS actually increased the number of involved, creating more problems that now need solving.¹⁸ These agencies should be consolidated into a single border services agency. This agency should provide all operational support for visa issuance and monitoring both in the United States and overseas.

¹⁵ James Jay Carafano, and Richard Weitz, “Building the Alliance for Freedom: An Agenda for Improving and Expanding the Visa Waiver Program,” May 6, 2005, Heritage Backgrounder #1850, <http://www.heritage.org/Research/NationalSecurity/bg1850.cfm>

¹⁶ James Jay Carafano, Statement before the House Permanent Select Committee on Intelligence, (August 10, 2004, <http://www.heritage.org/Research/HomelandDefense/tst081004a.cfm>

¹⁷ James Jay Carafano, Ph.D., Paul Rosenzweig, and Alane Kochems, “An Agenda for Increasing State and Local Government Efforts to Combat Terrorism” February 24, 2005, Heritage Backgrounder #1826, <http://www.heritage.org/Research/HomelandDefense/bg1826.cfm>.

¹⁸ James Jay Carafano, Statement before the Subcommittee on Management, Integration and Oversight, House Committee on Homeland Security, March 10, 2005, <http://www.heritage.org/Research/HomelandDefense/tst031005a.cfm>.

Visa Security Program

The DHS Visa Security Program was established under the authorities of the Homeland Security Act of 2002. Its purpose is in part to help coordinate visa policies, provide training to counselor officers and assist in the review of applications in Saudi Arabia. The program lacks strategic direction, adequate resources, and the current legislation authorizing the program is too restrictive.¹⁹ The program should be restructured and integrated into a single DHS border services agency.

Homeland Security University

The DHS lacks an institution to serve as a focus for professional development of its leaders and a forum for educating other leaders in other agencies and other countries, similar to the Defense Department's War Colleges and National Defense University. One major area of study at the Homeland Security University should be the subject of terrorist travel.

Next Steps

I hope this committee will provide a leadership role in encouraging the Congress to rethink our national system for visa issuance and monitoring, as well as tackling the perplexing issues of interagency cooperation that prevent the current system from being as effective as it could be. I look forward to discussing these and other issues and recommendations during the course of the hearing.

Once again, thank you, Mr. Chairman and the rest of the Committee for holding this hearing and for inviting me to participate. I look forward to answering any questions you might have.

¹⁹ General Accountability Office, "Actions Needed to Strengthen Management of Department of Homeland Security's Visa Security Program," GAO-05-801 (July 2005).

Dr. James Jay Carafano

Dr. Carafano is one of The Heritage Foundation's leading scholars in defense transformation, military operations and strategy, and homeland security. Recognizing that the war against terrorism will be a protracted conflict, his research focuses on developing the national security that the nation needs to secure the long-term interests of the United States-protecting its citizens, providing for economic growth, and preserving civil liberties.

An accomplished historian and teacher, Dr. Carafano was an assistant professor at the U.S. Military Academy in West Point, N.Y. and served as Director of Military Studies at the Army's Center of Military History. He also taught at Mount Saint Mary College and served as a fleet professor at the U.S. Naval War College. He is a visiting professor at the National Defense University and Georgetown University.

Dr. Carafano was a member of the National Research Council's Committee on Army Science and Technology for Homeland Security and currently serves on the National Defense Transportation Association's Security Practices Committee and is a 2005 Senior Fellow at the George Washington University's Homeland Security Policy Institute.

He is the coauthor of *Winning the Long War: Lessons from the Cold War for Defeating Terrorism and Preserving Freedom*. Looking at both history and the current policies for waging the global war on terrorism, this study argues that a successful strategy requires a balance of prudent military and security measures, continued economic growth, and the zealous protection of civil liberties. The book also highlights the ideological dimensions of the struggle, describing how the United States can and must win the "war of ideas" against terrorist ideologies.

In addition, Dr. Carafano is the coauthor of the text book, *Homeland Security* published by McGraw-Hill. *Homeland Security* is a practical introduction to everyday life in the new era of terrorism. Numerous key details are addressed, from roles of first responders and volunteers to family preparedness techniques to in-depth descriptions of weapons of mass destruction. Chapters examine infrastructure protection and business continuity, along with operations, tactics, and weapons of terrorist groups.

Dr. Carafano was also the principal author of the budget analysis in the 2003 Independent Task Force Report, *Emergency Responders: Drastically Underfunded, Dangerously Unprepared*, published by the Council on Foreign Relations. He was also a contributing author to the National Academies Army Science and Technology for Homeland Security 2004 report and co-director of the task force report, *DHS 2.0: Rethinking the Department of Homeland Security*.

His works on military history include: *Waltzing Into the Cold War*, published in 2002 by Texas A & M University; *After D-Day*, a Military Book Club selection published in 2000 by the Lynne Rienner publishing company of Boulder, Colorado; and *Made in America*:

Technology and GI Ingenuity on the Battlefields of Normandy, forthcoming from Praeger (2006).

As an expert on defense, intelligence, and homeland security issues, he has testified before the U.S. Congress and has provided commentary for ABC, BBC, CBS, CNBC, CNN, C-SPAN, Fox News, MSNBC, NBC, SkyNews, National Public Radio, The History Channel, and Australian, Austrian, Canadian, French, Greek, Japanese, and Spanish television. His editorials have appeared in newspapers nationwide including USA Today, The Washington Times, The Baltimore Sun, The New York Post, and The Boston Globe.

Dr. Carafano joined Heritage after serving as a senior fellow at the Center for Strategic and Budgetary Assessments, a Washington policy institute dedicated to defense issues.

Before that, he served 25 years in the Army, rising to the rank of lieutenant colonel. His areas of expertise included military strategy, joint operations, future combat systems, post-conflict operations, and nuclear weapons. During his service, Dr. Carafano served in Europe, Korea, and the United States and was head speechwriter for the Army Chief of Staff, the service's highest-ranking officer. Before retiring, he was executive editor of *Joint Force Quarterly*, the Defense Department's premiere professional military journal.

A graduate of West Point, Dr. Carafano also has a master's degree and a doctorate from Georgetown University and a master's degree in strategy from the U.S. Army War College.